

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

In re:)
)
PAULETTE DENISE LONG,) Case No. 03-46803-JWV
)
Debtor.)

**MOTION AND CLAIM OF APPROVED AUTO, INC. FOR
PAYMENT OF FUNDS PAID INTO THE REGISTRY OF THE COURT**

COMES NOW Approved Auto, Inc. (“Approved Auto”), by and through its counsel, Mark J. Schultz, and for the Motion and Claim of Approved Auto, Inc. for Payment of Funds Paid Into the Registry of the Court (“Motion”), respectfully states:

1. On October 29, 2003, debtor Paulette Denise Long (“Debtor”) filed with the Court her voluntary Petition pursuant to Chapter 13 of Title 11, United States Code.

2. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§157 and 1334, and venue in this Court is proper under 28 U.S.C. §§1408 and 1409(a). Further, this matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

3. On November 17, 2003, Drive Financial Services (“DFS”) filed a Proof of Claim which was assigned Claim No. 5 which reflected a secured claim for the amount of \$13,548.97, the collateral for which was a 2003 Pontiac Grand Am automobile (“Vehicle”).

4. On February 23, 2004, Richard V. Fink, Chapter 13 Trustee (“Trustee”), filed a Motion (document number 19 of the Docket Report of the Court) to avoid the lien of DFS with respect to the Vehicle on the basis that the Notice of Lien was recorded more than 20 days after the date the Vehicle was purchased and within 90 days of the filing of the Petition. On March 12, 2004, an Order was entered which granted such

Motion (document number 22 of the Docket Report of the Court). As a result, the claim DFS (Claim No. 5) was allowed as an unsecured nonpriority claim (*see*, Notice Allowing/Disallowing Claims filed by the Trustee (document number 30 of the Docket Report of the Court)).

5. On September 28, 2006, DFS withdrew its claim and the Clerk of the Court modified the Claim Register to reflect the same.

6. On December 16, 2006, the Trustee filed an Application to Deposit Funds Into the Registry on Behalf of Creditor ("Application") (document number 41 of the Court). The Application, which was filed pursuant to 11 U.S.C. §347, identified DFS as the payee under check number 24513 that was issued by the Trustee for the amount of \$3,110.57. The Order granting the Application ("Order to Deposit Funds") was entered on January 8, 2007 (document number 43 of the Docket Report of the Court).

7. On May 9, 2007, the Trustee filed the Trustee's Final Report and Account and Notice Thereof (document number 49 of the Docket Report of the Court) which reflected, *inter alia*, the total amount paid to DFS was \$3,733.69. The Trustee's Final Report and Account was approved by the Order entered on May 9, 2007 (document number 50 of the Docket Report of the Court).

8. Due to the Trustee's avoidance of DFS's lien on the subject vehicle, Approved Auto bought the loan back from DFS pursuant to the terms of the Retail Installment Contract and Security Agreement dated July 9, 2003 by and between Approved Auto and the Debtor. Therefore, Approved Auto sustained the loss as a result of the Trustee's avoidance of DFS's lien and is entitled to the proceeds of \$3,733.69 of DFS's Unsecured Claim. See Trustee's Final Report and Account and Notice Thereof

(document number 49 of the Docket Report of the Court).

9. Approved Auto neglected to file an assignment of claim prior to the close of the bankruptcy estate, but remains the holder of the note and unsecured claim and is entitled to its distribution.

10. Approved Auto seeks payment to it from the Registry of the Court of the \$3,110.57 paid into such Registry by the Trustee pursuant to the Order to Deposit Funds, and that such funds be made payable to the order of Approved Auto and remitted to the following address:

Gallas & Schultz
Attn: Mark J. Schultz
9140 Ward Parkway
Suite 200
Kansas City, Missouri 64114

WHEREFORE, Approved Auto respectfully prays that the Court enter an Order that:

- (a) grants this Motion and authorizes the Clerk of the Court to pay to Approved Auto, Inc. from the Registry of the Court the sum of \$3,110.57; and
- (b) grants such other relief as the Court deems just.

GALLAS & SCHULTZ

/s/ Mark J. Schultz
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ATTORNEYS FOR APPROVED AUTO,
INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2009, the above and foregoing was filed electronically with the Clerk of the Court pursuant to the Case Management/Electronic Case Filing system of the Court, and electronic notice of such filing was served by the Office of the Clerk upon parties in interest registered in such Case Management/Electronic Case Filing system with respect to this case

/s/ Mark J. Schultz
ATTORNEY FOR APPROVED
AUTO, INC.